Prison Litigation Network
Newsletter n. 3 – May 18th 2015
Follow-up of the ECHR case-law (April 13th – May 17th)

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Toran and Schymik v. Romania, 14 April 2015, (no. 43873/10) – *poor material conditions of detention, overcrowding*
The applicants are German nationals who were arrested, convicted and detained in Romania in several detention facilities (Timiş police station detention facility; Timişoara, Rahova, and Giurgiu prisons – however the complaint concerning the latter, too vaguely defined, was rejected as manifestly ill-founded).
Relying on Article 3 (prohibition of inhuman or degrading treatment), they complained in particular about the overcrowded and unhygienic conditions and extreme temperatures they had endured in detention.
The Government raised a preliminary objection of non-exhaustion of domestic remedies "*in so far as the applicants had not complained to the authorities about the conditions of their detention*" (§31) but the Court recalled that "*in recent judgments concerning similar complaints [it] has already found that […] the legal actions indicated by the Government did not constitute effective remedies*" (§34 – see Lăutaru v. Romania, no.13099/04, § 84, 18 October 2011, and Radu Pop v. Romania, no.14337/04, § 80, 17 July 2012).
The Court insisted on the fact that it "*has considered extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions complied with Article 3*" (§40 – see Karalevičius v. Lithuania, no.53254/99, § 39, 7 April 2005 and contra Muršić v. Croatia, no.7334/13, 12 March 2015). Then it considered that it "*has already found violations of Article 3 of the Convention on account of the material conditions of detention in Romanian detention facilities, including Timişoara Prison and Bucharest-Rahova Prison, especially with respect to overcrowding and lack of hygiene*" (§40 – see, for example, Ionuţ-Laurenţiu Tudor v. Romania, no. 34013/95, § 51, 24 June 2014). Lastly, it noted that "*the applicants' submissions in respect of the overcrowded and unhygienic conditions correspond to the general findings by the CPT in respect of Romanian prisons*" (§42).
Accordingly, the Court found that there had been a violation of Article 3 of the Convention.

Papastavrou v. Greece, 16 April 2015, (no. 63054/13) – *medical care*

The applicant is a Greek national currently serving several lengthy prison sentences. During his detention, suffering from a cardio-vascular disease, he underwent cardiac surgery in 2011 and was transferred to several health establishments in numerous occasions between 2012 and 2014.

The applicant submitted an application for a stay of execution of his sentence on medical grounds. Following this application the Piraeus Criminal Court on 9 January 2013 ordered a stay of execution of the applicant's sentence for five months. However this decision was never executed by the authorities.

Relying on Article 3 the applicant complained that the failure to execute the Criminal Court's decision endangered his life and amounted to inhuman and degrading treatment.

The Court, however, considered that in spite of the non-execution of the decision of stay of execution, the applicant was not deprived of medical care (§§94-95). Furthermore, the Court noted that the applicant refused on several occasions to receive his treatment or to be transferred (§96). Lastly, the Court declared that neither the life nor the health of the applicant was endangered during the five-month period during which he should have benefited from a stay of execution of his sentence.

As a result, the Court concluded that the Greek authorities did not fail to comply with their obligation to provide the applicant with the requisite medical assistance (Mouisel v. France, no.67263/01, §40) and that there had been no violation of Article 3 of the Convention (§§98-99).

Gal v. Ukraine, 16 April 2015, (no. 6759/11) – *deprivation of liberty, pre-trial detention*

The applicant is a Ukrainian national. He was arrested after criminal proceedings had been brought against him and placed in custody and in pre-trial detention.

Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court), the applicant complained that his detention had been unlawful and unreasonable; that he had not been brought promptly before a court after his arrest; and that the complaint about the unlawfulness of his detention had not been examined promptly.

Concerning the applicant's initial detention in custody, the Court noted that the Ukrainian authorities did not deny that it exceeded the maximum length of detention without a judicial decision (seventy-two hours) as defined in "*the relevant provisions of the Constitution of Ukraine and the Code of Criminal Procedure*" (§28). As a result, and no matter how far the applicant's detention went over the maximum legal length defined by law (see K.-F. v. Germany, 27 November 1997, § 72, Reports of Judgments and Decisions 1997VII), the Court considered it "*both arbitrary and unlawful*" (§28) . Therefore, the Court concluded that there had been a violation of Articles 5 §§1 and 3 of the Convention.

Concerning the three disputed periods of pre-trial detention the Court found a violation of Article 5 § 1 of the Convention on three main grounds. First because the national court advanced no reasons of an extension of pre-trial detention (§§33 and 37). Second because no maximum duration was fixed by the national court for the second extension, which is

"contrary to the principle of legal certainty, a principle which is implied in the Convention and which constitutes one of the basic elements of the rule of law" (§36 – it is worth mentioning that the Courts noted that it is a recurrent problem in Ukraine : see *mutatis mutandis* Kharchenko v. Ukraine, no. 40107/02, § 98, 10 February 2011). Third, concerning the third disputed period, because the national court based its decision to extend the pre-trial detention "*solely on the basis of the fact that a bill of indictment has been submitted to the trial court*" (§41) in other words "*without a specific legal basis or clear rules governing their situation*" (§41– see Kharchenko, cited above, §§ 71, 72 and 98).

Lastly, the Court considered that there had not been violation of Article 5 § 4 of the Convention, since the delay of seven days within which the national court examined a complaint from the applicant's lawyer concerning unlawfulness of his arrest and detention complied with the requirement of "speediness".

Todireasa v. Romania (no. 2), 21 April 2015, (no. 18616/13) – *poor material conditions of detention, medical care*

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Todireasa complained that the conditions he was held in at the five different prisons amounted to physical and psychological torture. In particular, he complained of severe overcrowding, poor hygiene and the presence of bedbugs and other parasites, inadequate heating, poor quality of food, defective sanitary installations and a lack of hot or cold running water, lack of appropriate furniture and improper conditions for eating his meals, and dirty and worn out mattresses and sheets. He further complained of inadequate health care in the various prisons where he had been detained as from August 2010.

The Government considered that the complaint should be declared inadmissible because of non exhaustion of domestic remedies.

First, concerning the material conditions of detention, the Government submitted "*that the applicant had not complained before the post sentencing judge or any other domestic authority about those specific issues*" (§42) but the Court stated that "*in recent applications lodged against Romania concerning similar complaints it has already analysed such submissions from the Government and found that, given the specific nature of this type of complaint, the legal avenues suggested by the Government did not constitute an effective remedy (see, for example, Leontiuc v. Romania, no. 44302/10, § 50, 4 December 2012, and Necula v. Romania, no. 33003/11, §§ 32-39, 18 February 2014)*" (§45).

Second, and conversely, concerning the lack of adequate medical treatment, "*the Court has already acknowledged the existence of an effective domestic remedy available for such complaints (see Petrea v. Romania, no. 4792/03, § 35, 29 April 2008). The Court observes that the applicant did not lodge a complaint in that respect before the competent authorities. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies*" (§48).

The Court mentions that the prison facilities mentioned in the applicant's plea are well known to the Court (§60) and evokes the "*cumulative effect*" of overcrowding and other factors to consider that there had been a violation of Article 3 of the Convention.

Cojan v. Romania, 28 April 2015, (no. 54539/12) – *poor material conditions of detention, overcrowding*

The applicant is a Romanian national currently detained in Giurgiu Prison. Relying on Article 3 (prohibition of inhuman or degrading treatment) he complains about the poor conditions of detention he endured in Rahova prison (overcrowding, poor hygiene and food, lack of natural light and access to fresh air, which have resulted in him becoming ill and depressed).

The Court points first that it has concluded in a series of cases that "*a clear case of overcrowding gives sufficient cause for finding that Article 3 of the Convention has been violated*" (§16 i. a. Colesnicov v. Romania, no.36479/03, §§ 78-82, 21 December 2010 and *contra* Muršić v. Croatia, no. 7334/13, 12 March 2015).

Then, the Court recalls that "*it has already found violations of Article 3 of the Convention on account of the physical conditions of detention in Romanian detention facilities, including the Bucharest Remand Centre and Rahova Prison, especially with respect to overcrowding and lack of hygiene*" (§16 – see i. a. Geanopol v. Romania, no. 1777/06, § 66, 5 March 2013).

Lastly, considering that "*the applicant's submissions […] correspond to the general findings by the CPT in respect of Romanian prisons*" (§18), the Court concludes that the conditions of detention "*caused the applicant harm that exceeded the unavoidable level of suffering inherent in detention and they have thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3 of the Convention*" (§19).

Milić and Nikezić v. Montenegro, 28 April 2015, (nos. 54999/10 and 10609/11) – *ill-treatment, substantive and procedural limbs of Article 3*

The applicants, Igor Milić and Dalibor Nikezić, are Montenegrin nationals. They alleged that they had been tortured and ill-treated by prison guards during a search of their cell. They complained that there had been no effective official investigation in this regard.

On the **substantive** aspect of Article 3, "*the Court notes that the domestic bodies established that the prison guards had hit the applicants with a rubber baton*" (§82), that a forensic doctor confirmed one of the applicant's injuries following the guards' action (idem), and that "*the domestic courts accepted that the use of force had been excessive, as acknowledged by the Government as well*" (idem). Noting moreover that *"[a]ny recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of Article 3 of the Convention (see Kopylov v. Russia, no. 3933/04, § 157, 29 July 2010)*" (§80), the Court holds that there has been a violation of the substantive limb of Article 3 of the Convention in respect of both applicants (§83).

The Court also found a violation of the **procedural** limb of Article 3 of the Convention in respect of both applicants because of the lack of effectively of the criminal investigation that followed the applicants' mothers' criminal complaints. These complaints were rejected by the State prosecutor ("*concluding that the prison guards had indeed used force but had done so in order to overcome the applicants' resistance, and had thus acted within their powers*" - §96), even if he "*did not obtain all the relevant video-recordings of the prison corridor at the time in question*". Moreover, it is worth noting that "*the second dismissal by the State Prosecutor […], took place after the Ombudsman had given his opinion on the matter […], finding that excessive force had been used and recommending disciplinary proceedings, and also after the end of the disciplinary proceedings […] where it was considered established that three prison guards [...] had abused their position and exceeded their authority by using excessive force disproportionate to the resistance offered by the applicants*" (§99). Since the prosecutor ignore these facts, the Court held there had been a violation of the procedural limb of Article 3.

Aleksandr Dmitriyev v. Russia, 7 May 2015, (no. 12993/05) – *poor conditions of detention, length of pre-trial detention*

The applicant, Aleksandr Dmitriyev, is a Russian national. His complaint concerned the length of time he had spent in detention pending trial and the conditions in one of the prisons in which he had been held.

On the alleged violation of Article 3, the Court, while noting that "*poor conditions of detention in the Russian detention facilities of the same type as [the prison were the applicant was placed] have been acknowledged to represent a structural problem of non-compliance with the standards of Article 3 of the Convention*" (see §36, Ananyev and Others v. Russia, 10 January 2012, nos 42525/07 and 60800/08, §§ 184-190), recalled that "*an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable [...] to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds*" (§36). Because of the lack of relevant materials to support his claims of overcrowding, "*such as, for example, written statements by other inmates who had shared the cells with him*" (§39), the Court "*is bound to conclude*" that the applicant's complaint under Article 3 of the Convention is manifestly ill-founded and must be rejected (§39-41)

On the alleged violation of Article 5§3, the Court reminds that, on a large number of occasions, it still has "*noted the fragility of the reasoning employed by the Russian courts to authorise an applicant's remaining in custody*". The Court concludes that "*by failing to address specific facts or consider alternative 'preventive measures' and by relying essentially and routinely on the gravity of the charges, the authorities extended the applicant's detention pending trial on grounds which, although 'relevant', cannot be regarded as 'sufficient' to justify its duration [...]. There has therefore been a violation of Article 5 § 3 of the Convention*" (§§59-60).